THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0145, Lillian E. Billewicz, Individually and as Mother and Natural Guardian of Johnathon Billewicz and Michael Billewicz & a. v. Attorney Jackson W. Casey, the court on December 5, 2005, issued the following order:

The plaintiff, Lillian Billewicz, individually and as mother and natural guardian of Johnathon and Michael Billewicz, appeals the trial court's order granting summary judgment to the defendant, Attorney Jackson W. Casey, on her breach of contract claim. We affirm.

We will affirm a trial court's grant of summary judgment if, considering the evidence and all inferences properly drawn therefrom in the light most favorable to the non-movant, our review of that evidence discloses no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Coyle v. Battles, 147 N.H. 98, 100 (2001). We review the trial court's application of the law to the facts de novo. Id.

The plaintiff argues, in part, that granting summary judgment to the defendant was error because there were material issues of disputed fact as to whether her breach of contract action was timely. To be timely, a contract claim must be brought within three years of when it arose. See RSA 508:4, I (1997). "A cause of action arises once all the necessary elements are present. In the case of a contract action, it would be when the breach occurs." Coyle, 147 N.H. at 100 (brackets, quotation and ellipses omitted). In this case, the undisputed evidence, viewed in the light most favorable to the plaintiff, establishes that the breach occurred, at the latest, on June 14, 2001, when the parties met and the plaintiff became aware that the defendant had not filed petitions for an attachment and a constructive trust to challenge her father's will. Because her breach of contract action was not filed until June 17, 2004, more than three years after the June 14 meeting, it was untimely. See id. at 100-01.

The plaintiff seems to argue that the "discovery rule" should apply to her breach of contract claim. Under the discovery rule, if the injury and its causal relationship to the act or omission complained of is not discovered or could not reasonably have been discovered when the action arose, the statute of limitations does not begin to run until the plaintiff discovers or in the exercise of reasonable diligence should have discovered this causal relationship. Id. at 101.

The discovery rule does not revive the plaintiff's claim. The plaintiff argues that, until she received the defendant's June 20, 2001 letter, she believed that the defendant was working on the challenge to her father's will. Thus, she contends, the statute of limitations did not begin to run until June 20, 2001, at the earliest.

The plaintiff's affidavit submitted in support of her motion for reconsideration refutes this assertion by averring that: "On June 14, 2001, there

was a meeting with Atty. John Ransmeier, then Interim Trustee of the family trusts, [the defendant], and myself. Atty. Ransmeier was insistent that since I had not challenged the Will within the Probate Statutory time, I was forever time barred from any claim." As of June 14, 2001, therefore, the plaintiff knew that, although she had retained the defendant's services in 1999, he had not filed any action, in law or in equity, to challenge her father's will. See Pichowicz v. Watson Ins. Agency, 146 N.H. 166, 168 (2001) (plaintiff does not need to be certain of causal connection between harm and alleged breach; the possibility that causal connection exists suffices).

Because we have upheld the trial court's determination that the plaintiff's breach of contract claim was untimely, we need not address its ruling that her claim was barred also because she failed to demonstrate that she suffered actual loss. In light of our decision, the plaintiff's motion for partial remand is moot.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox,
Clerk